

Complaint

Mr W complains that Santander UK plc won't refund around £25,000 which he says was debited from his account without his authority.

Background

Following an investigation by a third party bank where Mr W held an account, that bank made a report to the police. As a result, Mr W was arrested. The police dropped its investigation around a year later and no charges were brought. He complains, in summary, that:

- Santander blocked his account on 3 February 2017. But the restraining order wasn't made by the police until 17 February 2017.
- The account should have been unblocked when Santander received notification that the police had lifted the restraining order on 23 February 2018. It wasn't unblocked until May 2018 and during this period Santander transferred £25,514.77 back to the third party bank to an account not in his name. If his account had been unblocked when it should have been, the transfer wouldn't have been made.
- The transfer was made without his authority. And wasn't made on the instructions of the police.
- He received conflicting information about why the money was debited – Santander suggested it was following orders from the police, but it also said it was acting in accordance with instructions from the third party bank.
- No notice was given of the account closure. Santander has concluded he is a "risk", but there's no evidence of this – his circumstances are unchanged from when he opened the account in 2016.

Santander said it blocked Mr W's account following information it received from the third party bank. It received indemnities for money that had been credited to Mr W's account – a total of £27,000. So, when it unblocked the account, it transferred the balance of Mr W's account - £25,514.77 - to the third party bank. It also took the decision to close Mr W's account without notice. It acknowledged that Mr W received poor service when he complained and, as a gesture of goodwill, it credited his account with £50.

The first adjudicator who investigated this complaint concluded that Santander should return the sum of £2,656.98 to Mr W, plus interest. This was because Mr W had credited other money to the account. Applying Clayton's rule, or the "first in, first out" principle, only £22,857.79 of the £27,000 remained. He also thought Santander should refund two account fees charged in April and May 2018 of £5 each.

Santander did not agree. It said Mr W had benefitted from funds he was not entitled to.

A second adjudicator concluded that Clayton's rule should not apply. She thought the money had been given to Mr W by a third party to protect it, so it should be returned in its entirety.

Mr W didn't agree. He said, in summary, that:

- The money was not held in trust for anybody; the money was transferred to Santander from an account held in his sole name with the third party bank.
- His account with Santander should have been unblocked on 23 February 2018 and the money should not have been transferred back to the third party bank. The lifting of the police order meant any obligation Santander had under the third party indemnity fell away.
- He hasn't been charged or convicted with any crime. Santander has acted judgementally and on hearsay.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr W has complained to the third party bank. This is the subject of a separate complaint which has been referred to this Service. This decision is only about whether Santander did anything wrong.

Blocking the account

Santander blocked Mr W's account on 3 February 2017. It did not need to give a reason to Mr W for its action. But I'm satisfied from the information I've seen that it acted reasonably in doing so. There was no obligation on the bank to wait for a police instruction or a court order before blocking the account. Its action was a commercial judgement to make and here, I'm satisfied that it was entitled to make that judgement.

Debiting Mr W's account

Santander received an indemnity request from the third party bank and it was obliged to act on it.

I appreciate Mr W feels strongly that, because the police didn't bring charges against him this proves he hadn't done anything wrong and the bank had no authority to debit his account. But Santander had received enough information from the third party bank to satisfy itself that the credits into Mr W's account were fraudulent.

The amount that Santander debited

The indemnities received from the third party bank were for three payments totalling £27,000. Mr W had spent some of this money, but there had also been further credits to his account – which were genuine and undisputed. As the investigators have previously explained, in situations like this, the general rule is that of 'first in/first out' in respect of credits and debits made to and from an account.

But, while I have regard for rules like this, I'm not bound by them in deciding what is, overall, fair and reasonable, taking into account all of the circumstances. Here, the circumstances aren't straightforward and looking at this impartially, I don't think a strict application of this rule results in a fair outcome.

I say this because Santander had enough information for it to reasonably suspect that the third party had not consented to their money being transferred to Mr W's personal account, or to be used by him for his own benefit. From the information I have seen, the third party had entrusted Mr W to manage their finances and they understood the money would remain deposited for their own sole benefit.

Mr W spent some of the third party's money. But, because he'd partly replaced it with his own money, Santander was able to return some of what he'd spent. This strikes me as fair, and a proportionate step to take, given the unique circumstances of this individual complaint.

On the day Santander made the transfer, £25,514.77 was available in Mr W's account, so this is the amount it transferred. Unfortunately, on the same day, a direct debit was processed which led to an overdrawn balance. But Santander later credited the account with £50 which cleared the overdraft.

Closure of the account

Santander wrote to Mr W to tell him it was closing his account and withdrawing banking facilities. I find it didn't need to give him notice of its decision to close the account. I say this because Santander was in receipt of information which reasonably led it to conclude that Mr W was in breach of the terms and conditions of the account. Specifically, clause 18.3 says:

"It is a condition that you do not.....e) act in any way to give rise to reasonable suspicion of fraud or other criminal activities."

And clause 18.2 allowed Santander to close the account without notice if a condition had been breached.

The conclusion of the police's investigation didn't result in any charges being brought against Mr W. But Santander had seen enough for it to reasonably make this decision.

I appreciate Mr W will be disappointed by my decision. He is free to reject it and pursue this matter through the courts should he wish to do so.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 May 2020.

Elizabeth Dawes
Ombudsman